copolymer of ethylene vinyl acetate, said second layer adjacent to said second surface of said first layer;

wherein said film is irradiated.

REMARKS

Reconsideration of the application as amended, respectfully, is requested.

Applicants respectfully request that the Examiner reconsider the finality of the rejection of this Office Action and withdraw the final rejection. Section §706.07(a) of the MPEP provides: "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection not necessitated by amendment of the application by applicant. . ."

On page 5 of this Office Action, the Examiner states that the "following new rejections are necessitated by the amendments of the application by Applicant." In paragraph 11 on page 5, the Examiner rejects claims 1-21 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Specifically, the Examiner finds that claims 1-21 are indefinite because claims 1, 12 and 17 recited blends of 1-99% ethylene alpha-olefin copolymer and 99-1% ethylene vinyl

acetate and that it is not clear and definite whether the percentage of the components is based on weight, volume or moles.

This rejection is new and was not necessitated by amendment as the percentages of the components were in the claims as originally filed. Therefore, applicants submit that the finality of the rejection is premature and request the withdrawal of the final rejection.

The Examiner rejected claims 1, 2, 11-13, 16-18 and 21 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,374,459 to Mumpower et al. Applicants previously filed a Rule 131 Declaration to overcome this rejection. However, the Examiner found that the declaration was deficient because it was not signed by all of the joint inventors.

Applicants enclose a Declaration of Prior Invention to Overcome Cited Patents under 37 C.F.R. §1.131 to swear behind the Mumpower patent. This declaration is signed by the remaining joint inventors who had not signed the previously submitted declaration.

The Examiner rejected claims 1-21 as being unpatentable over U.S. Patent No. 5,397,603 to Georgelos in view of U.S. Patent No. 4,457,960 to Newsome. Applicants previously submitted a Rule 131 declaration to swear behind the Georgelos patent. The Examiner found that the declaration was insufficient because it was not signed by

all of the joint inventors.

Applicants enclose a Declaration of Prior Invention to Overcome Cited Patents under 37 C.F.R. 1.131 to swear behind the Georgelos patent reference. The declaration is signed by the remaining inventors who did not sign the previously submitted declaration. In addition, applicants note that both the filing date and the issue date of the Georgelos patent are after the filing date of the parent application from which this application claims priority.

The Examiner rejected claims 1, 2, 4-12 and 14-16 under 35 U.S.C. §103 as being unpatentable over Newsome in view of the Van der Sanden article in the Tappi Journal and in view of U.S. Patent No. 4,894,107 to Tse et al. Specifically, the Examiner found that the claims do not necessarily contain an ethylene alpha-olefin copolymer having a molecular weight distribution of less than 2.5 and an I_{10}/I_2 ratio of about 7 to 12.

Applicants have amended claims 1 and 12 to ensure that the ethylene alpha-olefin copolymers referred to in the claims do have a molecular weight distribution of less than 2.5 and an I_{10}/I_2 ratio of about 7 to 12.

The Examiner rejected claims 1, 3 and 13 under §103 as being unpatentable over Newsome in view of Van der Sanden, Tse and U.S. Patent No. 4,254,169 to Rosenthal et al. Specifically, the Examiner found that the claims do not

necessarily contain an ethylene alpha-olefin copolymer having a molecular weight distribution of less than 2.5 and an I_{10}/I_2 ratio of about 7 to 12. Applicants have amended claims 1 and 12 to ensure that the ethylene alpha-olefin copolymers referred to in the claims do have a molecular weight distribution of less than 2.5 and an I_{10}/I_2 ratio of about 7 to 12.

The Examiner rejected claims 1-21 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner found that claims 1-21 are indefinite because claims 1, 12 and 17 recite blends of 1-99% of ethylene alpha-olefin copolymer and 99-1% ethylene vinyl acetate and that it is not clear whether the percentage of the components is based on weight, volume or moles.

Applicants have amended claims 1 and 12 to show that the percentage of the components is based on weight. The present application incorporates by reference the Newsome patent and the Tse patent. These patents also describe multilayer shrink films having blended layers. The blended layers are described interchangeably in terms of "%" and "% by weight" (See, for example Tse patent, Col. 3, lines 35-38; Col. 4, lines 14-25 and Newsome patent, col. 5, lines 45-47; Col. 6, lines 63 through Col. 7 line 16). As

these patents are incorporated by reference, applicants submit that the use of the term "%" in the blended layers is the same as "% by weight".

Claim 17 does not provide for percentages of components in a blend and thus, was not amended in this regard.

The Examiner also found that claims 1-21 are indefinite because it is not clear whether the ethylene vinyl acetate component of the blends is a polymer of ethylene vinyl acetate or a copolymer of vinyl acetate and the ethylene alpha-olefin.

Applicants amended claims 1 and 12 to more clearly define the blends as made by an ethylene alpha-olefin copolymer and a copolymer of ethylene vinyl acetate. Claim 17 does not describe a blend and claim 17 was not amended in this regard.

The Examiner rejected claims 12-16 under 35 U.S.C. §112, second paragraph, as being indefinite because the claims were not clear as to whether the molecular weight distribution and the melt index referred to the first mentioned ethylene alpha-olefin or the second ethylene alpha-olefin.

Applicants have amended claim 12 to ensure that the recited molecular weight distribution and the melt index properties refer to each ethylene alpha-olefin copolymer in the claim.

The Examiners rejected claims 1-21 under 35 U.S.C. §103 as being unpatentable over Newsome in view of U.S. Patent No. 5,272,236 to Lai, Tse and Rosenthal. In order to establish a case of prima facie obviousness, there must be some suggestion or motivation to combine the teachings of the references and there must be a reasonable expectation of success. (See MPEP Section 2143).

The Examiner states that it would have been obvious to use single site catalyzed LLDPEs as taught by Lai in the package disclosed by Newsome in order to improve processability and physical properties as is further taught by Lai.

Lai discloses linear olefin polymers and some of the properties associated with these polymers. Lai does not disclose any of the problems or benefits of the use of these polymers in a multilayer film. In fact, Lai does not teach whether these polymers can be used in a multilayer film.

Lai does not disclose the blend of the linear olefin polymers with ethylene vinyl acetate copolymer. There is no teaching regarding any of the properties from such a blend or whether such a blend is desirable.

Lai does not disclose the crosslinking properties of the linear olefin polymers. Lai does not teach how these polymers will respond to irradiation.

Applicants submit that it would not have been obvious to make the present invention. In order to produce the present structure, applicants had to utilize the single site catalyst polymer in several different processes. None

of these processes are taught by Lai. The properties associated with these processes are also not taught so there is no suggestion in the prior art to make the claimed invention.

The Examiner rejected claims 1-21 under 35 U.S.C. §103 as being unpatentable over Newsome in view of the Dow Affinity brochure, Tse and Rosenthal. Applicants have claimed priority from a parent application. The parent application was filed on May 17, 1993. This filing date precedes the Dow Affinity brochure which is dated August 1993. (Please see the Dow Affinity brochure, last page, final line. The 893 corresponds to the month and year printed.)

Applicants have amended the claims pursuant to Rule 116 in that all of the amendments were made to comply with matters of form or to place the claims in better form for appeal.

Applicants respectfully submit that this application is now in condition for allowance.

Respectfully submitted,

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